ers of absolute liability to all those injured by such vehicles even when being used in the prosecution of their owner's business would seem to follow from the decision in *Ives* v. *South Buffalo Ry.*[2] In this case the New York Court of Appeals held that the imposition of an absolute liability on employers for injuries sustained by employees in certain occupations, classified by the statute as dangerous, could not be justified as a reasonable regulation under the police power. The court based its decision primarily upon the ground that the imposition of liability for injuries occasioned without fault is *per se* unconstitutional. But by the better view[3] the imposition of absolute liability is only unconstitutional where the particular mode of regulation would result in such hardship as to make its adoption unreasonable in the attainment of the desired end.[4] And, therefore, in order to protect those using the highways, it would seem that the legislature might properly impose upon owners of automobiles absolute liability for injuries occasioned when, at the time of the injury, the automobile is being used in the owner's business, or when he has failed to use reasonable care to keep his automobile out of the hands of others. However, the rule adopted by the statute in the principal case, in view of the object sought, seems unnecessarily harsh and certainly goes further then any statute thus far sustained.[5]

SPECIFIC AND GENERAL LEGACIES OF STOCK.—Under a specific legacy, if the identical thing bequeathed is not among the testator's assets at the time of his death, the legatee gets nothing from the estate; whereas, general legacies are not subject to this doctrine, known as ademption.[1]

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[2](1911) 201 N. Y. 271; see also Denver, etc. Ry. *v.* Outcalt (1892) 2 Colo. App. 395; Ziegler etc. *v.* South, etc. Ry. (1877) 58 Ala. 594. Had the legislature levied an assessment upon those engaged in dangerous employments for the purpose of creating a fund from which those injured could be indemnified, the court might well have upheld the statute. *Cf.* State *ex rel.* Davis-Smith Co. *v.* Clausen, *supra.*

[3]St. Louis Ry. *v.* Mathews (1897) 165 U. S. 1; Chicago, etc. Ry. *v.* Zernecke (1902) 183 U. S. 582. For a discussion of the cases dealing with an absolute liability see 10 Columbia Law Rev. 751. The imposition of an absolute liability is sometimes resorted to by legislatures to prohibit the exercise of a right altogether. Bertholf *v.* O'Reilly (1878) 74 N. Y. 509; Marvin *v.* Trout (1905) 199 U. S. 212. But, apparently, the object of the statute in the principal case was merely to regulate the exercise of the right. As to whether the legislature may exclude automobiles from the highways altogether, see People *v.* Rosenheimer (N. Y. 1913) 102 N. E. 530; 10 Columbia Law Rev. 477.

[4]See Ohio & Mississippi Ry. *v.* Lackey (1875) 78 Ill. 55; Camp *v.* Rogers (1877) 44 Conn. 291. The decisions which hold the imposition of absolute liability upon railroad companies for stock killed may be explained upon the ground that the insignificant value of the property sought to be protected does not warrant the adoption of this form of protection, with its resulting inconvenience.

[5]The statute under review in Camp *v.* Rogers, *supra,* apparently, attempted to impose a similar liability upon owners of vehicles, but because of the doubt the court felt in regard to the constitutionality of such a statute, it adopted a construction which avoided the difficulty.

[1]See Nusly *v.* Curtis (1906) 36 Colo. 464. Pecuniary legacies are sometimes loosely used as synonymous with general legacies, 1 Roper, Legacies (4th ed.) 191; *cf.* Humphrey *v.* Robinson (1889) 5 N. Y. Supp. 164,

And, moreover, specific legacies do not abate in the liquidation of the testator's debts, until the fund applicable to the payment of general legacies has been exhausted.[2] There has developed among the courts a strong tendency to construe all legacies as general, unless such a construction contravenes the clear language of the will. Two reasons have been given for this; first, because the courts regard specific legacies as a hardship both on legatees and creditors, and second, because it is generally believed that a testator intends to confer benefits equally upon all his legatees.[3]

In determining whether a bequest of stock is specific, and thus subject to ademption,[4] the courts have reached varied results as to how definitely the terms of the will must describe the property. It is generally recognized that a naked bequest of a definite number of shares in a named corporation is general,[5] and the weight of authority, while not excluding the evidence,[6] holds that proof of the number of shares owned by the testator at the date of the will cannot make an otherwise general legacy specific.[7] But in many cases such ownership of shares in excess of the number bequeathed is important, as indicating an in-

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although they include all demonstrative legacies, see Eckfeldt's Estate (Pa. 1879) 13 Phila. 202, and may be specific. See Lawson *v.* Stitch (1738) 1 Atk. 507.

[2]Myers' Executors *v.* Myers (1858) 33 Ala. 85. The fund applicable to the payment of general legacies, and priority in abatement of specific bequests and devises, varies in different jurisdictions, see O'Day *v.* O'Day (1906) 193 Mo. 62, but it is always subject to the intent of the testator. Moore's Executor *v.* Moore (1892) 50 N. J. Eq. 554, 562.

[3]Cramer *v.* Cramer (1901) 71 N. Y. Supp. 60; Dryden, Ex'r. *v.* Owings (1878) 49 Md. 356; but see Kunkel *v.* Macgill (1820) 56 Md. 120; and see Lord Eldon's interesting remarks in Sibley *v.* Perry (1802) 7 Ves. Jr. 522, 529.

[4]Although it has been held that a specific legacy may be adeemed by conditions paramount to the intention of the testator, see Blackstone *v.* Blackstone (Pa. 1834) 3 Watts 335, it would seem that the testator's intent, as ascertained from the entire will, always governs. Martin, Petitioner (1903) 25 R. I. 1. And an intent that a legacy should not be subject to ademption, as distinguished from a legacy conditioned upon a deficiency caused by an ademption, see Fontaine *v.* Tyler (1821) 9 Price 94, would make the bequest demonstrative or general. Shethal *v.* Sherman (N. Y. 1883) 65 How. Pr. 9. Thus although the proximate cause of the ademption is the fact that the property bequeathed does not belong to the testator at the time of his death, Ross' Executor *v.* Carpenter (Ky. 1849) 9 B. Mon. 367, nevertheless it is because the testator intended that the legatee should not be benefited. Some of the older authorities were to the effect that to work an ademption the alienation or destruction of the subject must be accompanied by an intention of the testator to adeem. Swinburne, Testaments & Wills, pt. 7, § XX; see Partridge *v.* Partridge (1736) Talbot 226. The later cases, however, recognize that this is of no importance. Ashburner *v.* Macguire (1786) 2 Bro. C. C. 108; *In re* Slater L. R. [1907] 1 Ch. 665; *cf.* Walton *v.* Walton (N. Y. 1823) 7 Johns. Ch. 258.

[5]Snyder's Estate (1907) 217 Pa. 71; Eckfeldt's Estate, *supra.*

[6]The admission of this evidence would seem to be an extension of the rule admitting parol evidence only to explain the ambiguous language. Loring *v.* Woodward (1860) 41 N. H. 391; *cf.* Palmer *v.* Estate of Palmer (1909) 106 Me. 25.

[7]See Dryden, Ex'r. *v.* Owings, *supra.*

tention that the bequest should refer to a part of the specific stock owned.[8] This indication is deemed to be stronger if he owned the exact number bequeathed, especially if this number is odd.[9] Certainly, if the bequeathed stock cannot possibly be acquired from anyone but the testator it is practically conclusive that the intention was to make the legacy specific.[10] And the gift of stock will be made specific not only by the use of such terms as "my stock," or "stock now standing in my name" and phrases of similar import, but also by any indication of clear intention to make it specific, even though this be in another part of the will,[11] as for example, a direction to an executor or trustee.[12] But there is great confusion in the cases, where a sum of money is given in stocks. By the better view, however, in the absence of other relative terms the gift is general.[13]

The difficulties which the courts have encountered in ascertaining whether a legacy in a particular will is specific or general or demonstrative is shown by a case in the Supreme Court of Maine—*Spinney* v. *Eaton* (1913) 87 Atl. 378. Here it was held that a bequest to the testator's sister of "fifty shares of my preferred stock" in a certain corporation was demonstrative. Unless the decision can be justified on the broad intention of the testator to be gathered from the entire will,[14] it seems to be a departure from the rule, as viewed by the authorities, which was stated recently by a New York court in the case of *In re Bouk's Estate* (Surr. Ct. 1913) 141 N. Y. Supp. 922.

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[8]Avelyn *v.* Ward (1749) 1 Ves. Sr. 420; see New Albany Trust Co. *v.* Powell (1902) 29 Ind. App. 494; but see *Re* Mackey (1903) 6 Ont. L. Rep. 292.

[9]Jeffreys *v.* Jeffreys (1744) 3 Atk. 120; see White *v.* Winchester (Mass. 1827) 6 Pick. 48; Metcalf *v.* Framingham Parish (1880) 128 Mass. 370, 373; but see Douglass *v.* Douglass (1898) 13 App. Cas. (D. C.) 21.

[10]Estate of Hastings (1882) 15 N. Y. St. Rep. 420.

[11]Harvard Unitarian Society *v.* Tufts (1890) 151 Mass. 76; Noon's Estate (1907) 49 Ore. 286; but see Mahoney *v.* Holt (1896) 19 R. I. 660. The legacy may be specific although the identification of the particular shares is insufficient to separate them from the entire number of the same description in the testator's estate, Eckfeldt's Estate, *supra; contra,* Mahoney *v.* Holt, *supra; cf.* Myers' Executor *v.* Myers, *supra,* and although the property is acquired after the date of the will, Stephenson *v.* Dowson (1840) 3 Beav. 342, and therefore, if to be ascertained at the testator's death, would not be subject to ademption. See Bothamley *v.* Sherson, (1875) L. R. 20 Eq. 304. A residuary clause in general, is not a specific legacy, *In re* Kemp's Estate (1912) 169 Mich. 578, but may be made so by a clearly expressed intent. Weed *v.* Hoge (1912) 85 Conn. 490; but see Stehn *v.* Hayssen (1905) 124 Wis. 583; *cf.* Martin, Petitioner, *supra.*

[12]Such as a direction to sell, *In re* Zeile's Estate (1887) 74 Cal. 125, but a mere direction to transfer seems insufficient; Sibley *v.* Perry, *supra;* but see Blackstone *v.* Blackstone, *supra;* or a separation into items of money and securities in a single bequest. Douglass *v.* Douglass, *supra.*

[13]Dryden, Ex'r. *v.* Owings, *supra.* In addition to the confusion as to the admission of evidence, and the weight to be given it, these cases involve the question of demonstrative legacies. Johnson *v.* Conover (1896) 54 N. J. Eq. 333. Perhaps for this reason, there is a stronger tendency among them not to attach supreme importance to the particular language of a bequest. *Cf.* Mytton *v.* Mytton (1874) L. R. 19 Eq. 30.

[14]The relationship of the parties should be of little weight. Parsons *v.* Reel (1911) 150 Iowa 230.